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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,532	10/23/2003	J. Rodney Walton	020573	2316
23596 7590 10/22/2009 QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121				
EXAMINER				
TSEGAYE, SABA				
ART UNIT		PAPER NUMBER		
2467				
NOTIFICATION DATE		DELIVERY MODE		
10/22/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/693,532	<b>Applicant(s)</b> WALTON ET AL.
<b>Examiner</b> SABA TSEGAYE	<b>Art Unit</b> 2467

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1, 3-16, 39, 40, 42-77 and 79-99.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Hong Cho/  
Primary Examiner, Art Unit 2467

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues (Remarks, page 12) that "Myles fails to teach or suggest two different types of random access channels including a first random access channel used by registered terminals and a second random access channel used by registered and unregistered terminals," as recited in claim 1. Examiner respectfully disagrees. Myles clearly disclosed that any mobile station (registered or unregistered) with queued data units is allowed to contend for access to it using a slotted ALOHA protocol. Further, Myles discloses that mobile stations may make reservations for the channel in future frames according to a modified R-ALOHA 9column 11, lines 7-11).

In response to Applicant argument (page 13) that Myles does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e. F-RACH and S-RACH) is not stated in the claims it is the claims that define the claimed invention, and it is the claim not specifications that are anticipated or unpatentable.

Applicant argues (page 15) that "neither Ma nor Chang teaches or suggests that there is may need to combine the teachings of the separate references...further, Applicant argues that there is no motivation for teaching and even if combined". Examiner respectfully disagrees. The motivation for combining two elements does not have to originate the reference itself. The test for obviousness is whether a person of ordinary skill in the art would have been motivated to combine the elements at the time the invention. As an additional argument, the Examiner also contends that "the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." Leapfrog Enter, Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1161 (Fed. Cir, 2007) (quoting KSR, 127 S. Ct. at 1739). "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims." KSE, 127 S. Ct. at 1742. Applicant, further, argues that "Ma is absolutely silent regarding contention-based access and does not use the term "contention" at all..." While it may be true that Ma does not use the term contention, Ma clearly teaches that Mode-1 supports the transmission of slow traffic channel and Mode-2 supports the transmission of a high speed data bursts. Examiner believes that the claims, given their broad reasonable interpretation, read on the references applied..